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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/085,394

02/28/2002

Jeffrey Batoff

NEXP-0005

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21302

7590

11/08/2005

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EXAMINER

ZEENDER, FLORIAN M

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/085,394	Applicant(s) BATOFF, JEFFREY	
	Examiner F. Ryan Zeender	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-187 is/are pending in the application.
- 4a) Of the above claim(s) 2-27,32-50,64-86,91-109 and 121-187 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,28-31,51-63,87-90 and 110-120 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date.

This application is claiming the benefit of prior-filed nonprovisional application No. 09/964,262 under 35 U.S.C. 120, 121, or 365(c). Copendency between the current application and the prior application is required. Since the applications are not copending (**i.e., 09/964,262 was abandoned on 1/8/2002, prior to the present application filing date**), the benefit claim to the prior-filed nonprovisional application is improper. Applicant is required to delete the reference to the prior-filed application from the first sentence(s) of the specification, or the application data sheet, depending on where the reference was originally submitted, unless applicant can establish copendency between the applications.

Further, the present application claims benefit to provisional applications, 60/235,367 and 60/268,854, both of which were filed more than one year prior to the filing of the present application. The benefit claim to the prior-filed provisional applications are improper. Applicant is required to delete the reference to the prior-filed applications from the first sentence(s) of the specification, and/or the application data sheet, depending on where the reference was originally submitted.

Election/Restrictions

Applicant's election with traverse of Group 3 in the reply filed on 10/14/2005 is acknowledged. The traversal is on the ground(s) that particularly Group 11 is an "obvious similarity" to Group 3. No additional arguments were presented regarding the other Groups. The argument is found to be persuasive regarding Group 11 but is not found persuasive regarding all other groups because the species are distinct inventions.

The requirement is still deemed proper and is therefore made FINAL.

Claims 2-27, 32-50, 64-86, 91-109, and 121-187 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected species.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Postrel '317.

Postrel discloses a method for providing users with the ability to engage in a swap including the use of credits (i.e., "points"; See for example paragraph 0056) for entering an item allowing users to acquire items presented by other users.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 28-31, 51-53, 55-63, 87-90, 110-112, and 114-120 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore '938 in view of Postrel '317.

Moore discloses a method for providing users with the ability to engage in a swap including the use of credits (See for example Col. 5, lines 7-12) allowing users to acquire items presented by other users.

Moore lacks the specific teaching of the credits being provided for entering an item.

Postrel teaches a method for providing users with the ability to engage in a swap including the use of credits (i.e., "points"; See for example paragraph 0056) **for entering an item** allowing users to acquire items presented by other users.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Moore to provide credits specifically for entering an item, as taught by Postrel, in order to allow producers of goods a method of liquidating surplus items into the supply of the system (See for example Postrel, paragraph 0056).

Re claim 63: the applicant has admitted in his response received 10/14/2005 that the limitations in this claim are an obvious similarity to claim 1. Thus, the claim is rejected for the same reason as claim 1, in view of applicant's admission of obviousness.

Re claims 28, 31, 87 and 90: Moore teaches grouping items together in categories (See for example Col. 7, lines 46-58). Further, it is well known in a retail setting to limit the amount of goods offered to "buyers" (for example sale items) in order that the product is not sold out. Therefore, it would have been an obvious design choice to modify Moore to offer to users only one available item in a particular category, in order to ensure that the items of that category are not "sold out". Regarding claims 31 and 90: the concept of "first-in-first-out" is well known in the art of inventory management and it would have been obvious to one of ordinary skill in the art to modify Moore to employ the "first-in-first-out" concept in order to maintain "fresh" and current inventory.

Re claims 29-30 and 88-89: the limitations are obvious design choices well known in inventory management in order to identify specific products.

Re claims 51 and 110: It would have been an obvious design choice to one of ordinary skill in the art to allow a user to have no immediate obligation to surrender an entered item, in order to allow the user to determine if the other item for which he/she is bartering for is of comparable worth.

Re claims 52 and 111: Moore teaches book inventory as well as timeshare inventory.

Re claims 55 and 114: This limitation is an obvious design choice to ensure that each party of a barter trade receives his/her desired item.

Re claims 57 and 116: This limitation is an obvious design choice in order to discourage users from closing their accounts.

Re claims 59 and 118: This limitation is an obvious design choice in order provide the designer of the system an opportunity to actually engage in barter trades.

Re claims 60-62 and 119-121: The limitations are well known in e-commerce in order to provide information.

Claims 54 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore '938 in view of Postrel '317, as applied to claims 1 and 63 above, and further in view of Bradford et al. '759.

Moore in view of Postrel teach the limitations of the claims except the user's unused credits not required to be equal to the combined total credits of all inventory items entered by the user which have not been surrendered.

Bradford et al. teaches a similar exchange and including a system whereby a user can use a national currency (i.e., US dollars) to purchase a mutual currency (i.e., credits) in order to barter for goods. *(a scenario where the user's credits would exceed the total credits of all inventory items entered by the user which have not been surrendered)*

It would have been obvious to one of ordinary skill in the art to modify Moore and Postrel to include a method whereby the user's unused credits are not required to be

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equal to the combined total credits of all inventory items entered by the user which have not been surrendered, in view of Bradford et al., in order to allow the user to subsidize his/her barter trade with cash.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Ryan Zeender whose telephone number is (703) 308-8351. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alex Kalinowski can be reached on (571) 272-6771. The receptionist's phone number for the Technology center is (571) 272-3600.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

F. Zeender
Primary Examiner, A.U. 3627
October 31, 2005

 10/31/05
F. RYAN ZEENDER
PRIMARY EXAMINER